

July 14, 2020

**VIA E-MAIL**

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Aida Camacho-Welch  
Secretary  
NJ Board of Public Utilities  
44 South Clinton Street, 9th Floor  
P.O. Box 350  
Trenton, New Jersey 08625

**Re: In the Matter of the Petition of Commercial Metals Company for a Declaratory  
Ruling  
BPU Dkt. No. EO20050352**

Dear Secretary Camacho-Welch:

Enclosed for filing please find a Motion to Intervene and Comments on behalf of Jersey Central Power & Light Company in the above-referenced matter.

This letter is being sent electronically consistent with the Board's Order dated March 19, 2020 (Docket No. EO20030254) directing that all submissions to the Board or Rate Counsel, of any kind, be submitted electronically.

Respectfully submitted,

COZEN O'CONNOR



By: Gregory Eisenstark

GE:lg

Enclosure

cc: (via email only)  
Murray Bevan, Esq.  
Abe Silverman, Chief Counsel, BPU  
Paul Flanagan, Executive Director, BPU  
Robert Brabston, Deputy Executive Director, BPU  
Stacy Peterson, Director, Division of Energy, BPU  
Kelly Mooij, Director, Division of Clean Energy, BPU

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Stefanie Brand, Director, Division of Rate Counsel  
Brian Lipman, Division of Rate Counsel  
Pamela Owen, DAG  
Lauren Lepkoski, Esq., FirstEnergy  
Mark Mader, JCP&L



Mark A. Mader  
Jersey Central Power & Light Company  
300 Madison Avenue  
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-and-

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FirstEnergy Corp.  
2800 Pottsville Pike  
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3. The criteria for intervention are set forth in N.J.A.C. 1:1-16.1:

Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

4. The standards that must be taken into consideration when a motion to intervene is being considered are set out in N.J.A.C. 1: 1-16.3(a):

...the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

5. JCP&L respectfully submits that the above criteria and standards support the granting of this Motion.

6. Commercial Metals Company ("CMC" or "Petitioner") has filed the subject Petition seeking a declaratory ruling from the Board ". . . that, because it has an economically viable opportunity to bypass the electric distribution system, its load may be exempt from renewable portfolio standard compliance so long as it remains an electric distribution customer of [JCP&L], or for alternative relief that would provide a commensurate reduction in CMC's energy costs." *Petition*, p. 1.

7. CMC is a large, industrial customer of JCP&L. CMC operates a steel mill in Sayreville, New Jersey ("Sayreville Steel Mill"), which is located in JCP&L's franchised

service territory. CMC recently acquired the Sayreville Steel Mill from Gerdau Ameristeel.<sup>1</sup> In fact, as it acknowledges in the Petition, CMC's Sayreville Steel Mill is one of JCP&L's largest electric distribution customers in terms of load and usage.

8. The Board's decision in this proceeding could have a substantial, specific and direct impact on JCP&L's operations and customers in several respects, including a potential impact on JCP&L's revenues. In addition, the Board's decision in this matter may involve issues of first impression, which could substantially, specifically and directly impact electric distribution utilities such as JCP&L.

9. Petitioner specifically references JCP&L's (and its customers') interest in the outcome of this matter, alleging in the Petition that the requested declaratory ruling would be "beneficial to JCP&L's ratepayers by avoiding the loss of the utility's largest load that would otherwise result from the bypass of the distribution system. Specifically, the loss of the utility's largest load would result in reduced revenue that would otherwise benefit JCP&L ratepayers." *Petition*, p. 7.

10. Petitioner also alleges that "CMC has an economically viable opportunity to bypass JCP&L's electric distribution system and to supply its electricity needs directly from the wholesale market." *Petition*, pp. 1, 5, 6, 7. While JCP&L disagrees that CMC can bypass the JCP&L distribution system (as explained in the Comments below), such a bypass, if permissible, would have a significant impact on JCP&L's revenues and on the rates of JCP&L's other customers.

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<sup>1</sup> The prior owners of the Sayreville Steel Mill have sought and received several discounts to their electric rates. *See, e.g., I/M/O the Petition of Gerdau Ameristeel Sayreville, Inc. for Waiver of Requirements Concerning the Societal Benefits Charge*, BPU Dkt. No. EW17030256 (Order dated April 25, 2018). Under JCP&L's Tariff, CMC continues to receive a discounted Societal Benefits Charge rate.

11. CMC also alleges that economic factors threaten the viability of its Sayreville Steel Mill. CMC is a very large customer of JCP&L, and a decline in CMC's continued economic viability will likely have a significant impact on JCP&L's revenues.

12. As demonstrated by the foregoing paragraphs, JCP&L will be substantially, specifically and directly affected by the outcome of this matter. Moreover, JCP&L's interest in this proceeding is clearly different from that of any other party and its intervention can add measurably and constructively to the proceeding.

13. The Petition was filed on or about May 11, 2020, and JCP&L submits that its intervention shortly after that submission will not cause confusion or undue delay. Despite repeatedly referencing its Petition's impact on JCP&L and its customers, CMC inexplicably failed to serve a copy of its Petition on JCP&L or its counsel. JCP&L only learned of CMC's filing when the Division of Rate Counsel provided JCP&L with a copy of it in late June, 2020.

14. Accordingly, JCP&L respectfully requests that the Board grant it full intervention status in this proceeding pursuant to N.J.A.C. 1:1-16.1 et seq.

## **COMMENTS**

CMC has filed a petition that asks the Board to issue a declaratory ruling "that, because it has an economically viable opportunity to bypass the electric distribution system, its load may be exempt from renewable portfolio compliance so long as it remains an electric distribution customer of JCP&L." *Petition*, pp. 1, 5, 6, 7. Notably absent from CMC's Petition is any controlling legal precedent that supports its request. CMC cites Board orders approving discounts for natural gas customers (*see Petition*, p. 5) and general principles of the Board's jurisdiction over utility rates (*see Petition*, p. 6). However, none of cited decisions or statutes stand for the proposition that a retail electric distribution customer can simply bypass an electric distribution utility (and even its statutory, non-bypassable tariff charges), or that the Board can exempt retail load from the

renewable energy portfolio standards (“RPS”). In fact, both prongs of CMC’s requested relief are legally impermissible.

CMC’s request that the Board declare its load exempt from compliance with the RPS is contrary to the explicit statutory provisions governing the RPS. As the Board is well-aware, the RPS requirements apply to suppliers, not load. *N.J.S.A.* 48:3-87(d) provides, in pertinent part:

the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, renewable energy portfolio standards that shall require:

(1) that two and one-half percent of the kilowatt hours **sold in this State by each electric power supplier and each basic generation service provider** be from Class II renewable energy sources;

(2) beginning on January 1, 2020, **that 21 percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider** be from Class I renewable energy sources. The board shall increase the required percentage for Class I renewable energy sources so that by January 1, 2025, 35 percent of the kilowatt hours **sold in this State by each electric power supplier and each basic generation service provider** shall be from Class I renewable energy sources, and **by January 1, 2030, 50 percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources.** \* \*

\*

**An electric power supplier or basic generation service provider may satisfy the requirements of this subsection** by participating in a renewable energy trading program approved by the board in consultation with the Department of Environmental Protection;

(3) that the board establish a multi-year schedule, applicable to each electric power supplier or basic generation service provider in this State, beginning with the one-year period commencing on June 1, 2010, and continuing for each subsequent one-year period up to and including, the one-year period commencing on June 1, 2033, **that requires the following number or percentage, as the case may be, of kilowatt-hours sold in this State by each electric power supplier and each basic generation service provider** to be from solar electric power generators connected to the distribution system in this State: \* \* \*

*N.J.S.A.* 48:3-87(d), emphasis added.

Thus, it is clear that all BGS suppliers and third-party suppliers (“TPSs”) must satisfy the RPS requirements each year, for all the load they serve. It is equally clear under the statute that the RPS simply do not apply to the customer – they apply to the supplier. Therefore, CMC’s request

that the Board declare its load exempt from the RPS is contrary to the direct statutory requirements and is beyond the Board's jurisdiction to grant.

Similarly, if CMC is actually asking the Board to exempt its TPS from complying with the RPS to the extent of CMC's load, that too would be unlawful. There is no provision in Title 48 that allows a TPS (or a BGS supplier) to receive a waiver of their RPS compliance for a single customer. Doing so would defeat the very purpose of a statutory RPS and frustrate the State's renewable energy goals.

Moreover, such an exemption, even if it were lawful, would shift the burden of meeting the RPS requirements onto other electric generation customers and their suppliers. Therefore, the statement in CMC's Petition that "[t]he Board order would enable the suppliers to pass on the RPS compliance costs savings to CMC without shifting those costs to other customers" is simply untrue. CMC's proposal would clearly shift the RPS compliance costs to other customers, since the statewide RPS requirements must be satisfied.

In regard to its threatened bypass of the JCP&L distribution system, CMC has cited no BPU precedent for retail bypass of an electric distribution utility. While the Board has issued orders that provide a framework for certain natural gas customers to receive Board-approved rate discounts if they have a viable bypass option<sup>2</sup>, no similar precedent exists for electric customers. Certain electric customers can self-supply with on-site generation. *See, e.g., N.J.S.A. 48:3-77.*<sup>3</sup> But a retail electric distribution customer cannot simply install its own distribution or transmission facilities, connect directly to the electric transmission system, and "supply its electricity needs

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<sup>2</sup> *See, e.g., In the Matter of a Generic Proceeding to Consider Prospective Standards for Gas Distribution Util. Rate Discounts & Associated Contract Terms & Conditions*, BPU Dkt. No. ER10100762 (Aug. 18, 2011).

<sup>3</sup> In the limited circumstances where on-site generation may supply an off-site thermal energy customer, the delivery of that electricity must utilize the existing, locally franchised public utility electric distribution infrastructure. *N.J.S.A. 48:3-77.1.*



directly from the wholesale market” as CMC claims (*see Petition*, p. 6).<sup>4</sup> Doing so would violate the franchise rights of the electric utility, in this instance, JCP&L. In this regard, it is important to emphasize that electric utilities (unlike gas utilities) derive their franchise right (and obligation) to serve from statute – *N.J.S.A. 48:7-1*.

If retail electric distribution customers were allowed to simply install wires in the ground (or in the air) and bypass their electric distribution utility, the utility would be left with stranded assets. The cost of such stranded assets would need to be recovered from the utility’s remaining customers. In the instance of CMC, JCP&L owns and maintains a substation specifically to serve the load at the Sayreville Steel Mill. The current net book value of the assets dedicated to serve CMC’s Sayreville Steel Mill is approximately \$2 million.

In sum, CMC has not substantiated its legal right to bypass JCP&L’s electric distribution system. While the Board need not rule on whether CMC can legally bypass JCP&L’s system (because CMC’s requested relief regarding the RPS requirements is also legally impermissible), JCP&L has addressed this issue in its comments to make clear that CMC’s bypass claims offer no support for the requested declaratory ruling.

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<sup>4</sup> CMC’s statement that it could purchase “wholesale” electric transportation service (whether deemed distribution or transmission) blurs the line between retail and wholesale. Wholesale service is purchased by entities who resell the service to retail customers, not by retail customers for their own end use.

**Conclusion**

For all the foregoing reasons, JCP&L requests that the Board grant it intervenor status in this proceeding and deny the Petition for Declaratory Ruling.

Respectfully submitted,

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Attorneys for Jersey Central Power & Light Company



By: \_\_\_\_\_

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Dated: July 14, 2020